

Small Business Regulatory Fairness Board Board Meeting

**Truman State Office Building
Room 680, Conference Room
Jefferson City, MO**

January 26, 2011

Members Attending: Chair Nancy Zurbuchen, Kansas City; Bob Bess, St. Louis; Vicki Englund, St. Louis; Sheila Forrest, St. Louis; Vice Chair Shane Libel, St. Joseph; and Jim Seigfreid, Warrensburg.

Members Absent: Scott George, Mt. Vernon; Micheal Ocello, St. Louis; and Sheila Sweeney, St. Louis.

State Agency Liaisons Present: Scotty Allen, Department of Social Services; Joel Allison, Department of Revenue; Denise Bateman, Department of Conservation; Bret Fischer, Department of Health and Senior Services; Melissa Manda, Department of Mental Health; Kris Morrow, Department of Elementary and Secondary Education; Rudy Nickens, MODOT; Walter Pearson, Office of Administration; and Morris Woodruff, PSC.

Staff Agency Liaisons not able to attend the SBRFB meeting because schedule conflicts and were attending House and Senate hearings were: Connie Clarkston, Professional Registration; Grady Martin, Dept. of Insurance, Financial Institutions and Professional Registration; Julie Murphy Finn, Dept. of Economic Development; Shelly Kintzel, Dept. of Labor and Industrial Relations; James Klahr, Dept. of Public Safety; Matt Sturm, Dept. of Corrections; Leanne Tippet Mosby, Dept. of Natural Resources; and Michael Warrick, Dept. of Agriculture.

DED Staff Present: Sherry L. Anderson, DED-Boards and Commissions Liaison and Vicki Webster, DED-Assistant General Counsel.

Others Present: Randy Angst, Bailey's TV, Lebanon and former SBRFB chair and presently serving as chair of NFIB-Missouri; Brad Jones, Director, NFIB-Missouri; Jessica Henman, MSN, CNM, Nurse Midwife, Owner, Birth and Wellness Center, Warrenton; Shari Stone-Ulrich, Certified Nurse-Midwife, Missouri Midwives Association, Helena; Halley Watson, RN, Birth and Wellness Center; and Keith Williston, Executive Director, Mother's Love Birthing Center/Sister's Touch, Independence.

Board Business Meeting

Chairman Nancy Zurbuchen called the SBRFB January 26, 2011 meeting to order at 9:05 a.m. Chairman Zurbuchen welcomed everyone to the meeting and thanked all in attendance for their support and participation and asked for introductions

With no corrections or additions Chair Zurbuchen asked for a motion to approve the minutes. Motion was made by Vice Chair Shane Libel. Bob Bess seconded the motion to accept the September 15, 2010 Board meeting minutes. All approved, motion carried.

Chair Zurbuchen provided an overview of state agencies responsibilities and specific responsibilities for the SBRFB:

- Provide input to the state agencies regarding rules that adversely affect small businesses.
- Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency.
- Provide evaluation report to the Governor and General Assembly including recommendations and evaluations of state agencies, regarding regulatory fairness for Missouri small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the Board.

Chair Zurbuchen stated small business owners may request that the Board make inquiry into rules issued by state agencies and the Board may make recommendations to the state agency. The state agency receiving recommendations from the board shall promptly consider such recommendations and make a file response with the Board within sixty days of receiving the Board's recommendations.

Concern was expressed that the 60 day agency response time was too long but to change it to a 30 day response could only be achieved by changing the statute. Chair Zurbuchen suggested the Board should consider adopting a policy requesting that the state agencies respond within 30 days to any additional Board's inquiries because the process can be drawn out too long and adversely affect a small business owner.

A motion was made by Bob Bess and seconded by Vicki Englund to require: After a state agency responds in 60 days to the initial Small Business Comment from the SBRFB, the state agency will be required to respond within 30 days to any subsequent responses filed by SBRFB. Motion adopted.

SBRFB Orientation for Board Members

SBRFB PowerPoint Slide

The Board received a hardcopy of the SBRFB State Agency Compliance Training power point presentation in lieu of the conducting the presentation in the interest of time.

Rulemaking Process

Cindy Kadlec, Director of the Joint Committee on Rules was unable to attend the meeting because of Joint Committee Rules hearing that was being conducted at the same time. The Board did receive a copy of rulemaking process as it appears on the JCAR webpage and an updated JACAR brochure will be sent out at a later date.

Statutes Governing SBRFB

Copies of Vernon's Annotation of Chapter 536 and Vernon's Annotation of SBRFB's regulations were distributed to the Board members.

Review of a Proposed Rule, with Attachments

The Board members received a copy of an active proposed rule with attachments that was filed by the Division of Professional Registration along with an explanation of the process and explanation of the SBRFB State Agency Regulation Tracking program.

Chair Zurbuchen discussed the background for this process and its importance. The SBRFB is required to provide the Governor and General Assembly including recommendations and evaluations of state agencies, regarding regulatory fairness for small businesses. The data entered in this tracking report is crucial to the Board's evaluation of the state agencies.

Ms. Anderson reported that she had been evaluating the 2010 Fiscal Year Report and she did not believe that she would be able to provide an accurate report. Her concern was she had not been able to verify if the state agency electronic documents were received. The Board requested that Ms. Anderson verify what is available for that fiscal year.

Question was raised why SBRFB's requires evaluation reports cover a fiscal year, July 1 through June 30 rather than a calendar year, January 1 through December 31. Chair Zurbuchen requested Ms. Anderson to contact Scott George and Randy Angst for an explanation.

Introduction of State Agency Liaisons

Walter Pearson-Office of Administration

Mr. Pearson reported that the Division of Purchasing and Materials Management has performed a thorough evaluation of its rules and will be filing additional rules in the future.

Mr. Pearson also reported that the Office of Administration division directors and support staff have completed the 2010 SBRFB (on-line) State Agency Compliance Training program.

In addition, Mr. Pearson asked for clarification regarding whether an agency is required to file a Small Business Impact statement (SBIS) with proposed rules or amendments which the agency has determined has no impact on a small business. Chair Zurbuchen stated that an agency is not required to file a SBIS if the agency has determined it will not impact a small business owner.

Rudy Nickens, Director, Equal Opportunity and Diversity-MO Department of Transportation (MODOT)

Mr. Nickens reported that MODOT rules affecting small businesses are traditionally in the areas of Motor Carriers Service (licensing trucks) and Disadvantaged Business Enterprise Program.

Mr. Nickens also reported that all MODOT division directors and staff have completed the 2010 SBRFB (on-line) Compliance Agency Liaison Training to ensure proper attention to and distribution of small business regulatory requirements.

Ms. Englund asked Mr. Nickens to closely watch all the top of the legislation being proposed because there could be some that affects small businesses.

Scott Allen, Special Counsel, Department of Social Services (DSS)

Mr. Allen reported that all division directors and staff have completed the 2010 SBRFB State Agency Compliance Training and DSS required all DSS contractors to complete the training.

Chris Morrow, Department of Elementary and Secondary Education, (DESE), Assistant General Counsel

Ms. Morrow stated the Board does not issue rules, the State Board of Education orders rules. Additional scrutiny is implied by the Board. There is a very strict separation between public and private schools in Missouri. Regulations focus on the public school system.

The Board's duties and responsibilities range from preschool to the postsecondary and adult levels. The Board does not have direct authority over higher education institutions. However, the Board sets standards for and approves courses and professional programs for teachers and school administrators in Missouri's public and private higher education institutions.

During the Rule making process DESE takes the following approach.

- The administrative staff makes recommendations, proposed rules are listed immediately,
- A specific review on the impact to small business is evaluated, there are three different layers of review,
- DESE has taken advantage of training offered by the SBRFB.
- The responsibility to small business has been taken seriously.
- All rules deal almost exclusively to schools.
- Even after a rule is in place the DESE's process is to go back and review all fiscal notes – if more than 10% discrepancy they will republish.

Denise Bateman, Department of Conservation

Ms. Bateman reported that the Dept. of Conservation have effectively involved the citizens of Missouri or the stakeholders before they begin the rule process. All citizens are important and the Department value their trust and point of view.

Ms. Bateman also reported that all division directors and staff have completed the 2010 SBRFB (on-line) Compliance agency liaison training to ensure proper attention to and distribution of small business regulatory requirements.

Morris Woodruff, Deputy Chief Regulatory Law Judge, Public Service Commission (PSC)

Mr. Woodruff reported the PSC regulates investor-owned electric, steam, natural gas, water and sewer and telephone companies, its mission is to ensure Missouri consumers have access to safe, reliable and reasonably priced utility service at just, reasonable and affordable rate. The PSC is cognizant that the rules proposed can affect small businesses and they provide the public the information they need to make educated utility choices and conduct extensive rulemakings and workshops.

Mr. Woodruff also reported that the PSC staff reviewed the 2010 (on-line) SBRFB Compliance Agency Liaison Training to ensure proper attention to and distribution of small business regulatory requirements.

Bret Fischer, Director, Division of Administration, MO Department of Health and Senior Services (DHSS)

Mr. Fischer reported DHSS has responsibility for a spectrum of services for Missouri citizens from child care to elder issues which involve small business owners who might provide those services. DHSS conducts public meetings and works with many stakeholders before and during the Department's rulemaking process.

DHSS really works on two halves, many of the rules affecting large business like hospitals and some affecting small businesses like hotels, childcare and food establishments. Most of the businesses affected work on a local level and take care of their communities. Within the Department the division mostly involved with regulatory fairness is the general council office. It is this office that determines whether there will be an impact and the extent of the impact on the business.

DHSS has agencies and programs throughout the state and we make every effort to talk to those out in the field to which we regulate. On our website we offer legislative tracking on issues important to our customers and we also allow for forms and applications to be downloaded from our website.

Mr. Fischer also reported that all division directors and staff have completed the 2010 (on-line) SBRFB Compliance Agency Liaison Training to ensure proper attention to and distribution of small business regulatory requirements

Joel Allison, Legislative Coordinator, MO Department of Revenue (DOR)

Mr. Allison reported that DOR administers Missouri's business tax laws, and collects sales and use tax, employer withholding, motor fuel tax, cigarette tax, tire and battery fee, financial institutions tax, corporation income tax, and corporation franchise tax. Different types of businesses must register for different types of taxes.

Mr. Allison also reported that all division directors and staff have completed the 2010 (on-line) SBRFB Compliance Agency Liaison Training to ensure proper attention to and distribution of small business regulatory requirements

Melissa Manda, Deputy General Counsel, MO Department of Mental Health (DMH)

Ms. Manda reported the DMH is governed by a seven-member Missouri Mental Health Commission, which serves as the principal policy advisory board to the department director. The DMH is organizationally comprised of three program divisions that serve approximately 150,000 Missourians annually, along with six support offices.

DHM makes services available through state-operated facilities and contracts with private organizations and individuals. Services are purchased from a variety of privately operated programs statewide through approximately 4,000 contracts managed annually by DMH. The rulemaking process for DHM is quite involved and may take even years to complete.

Ms. Manda also reported that representatives of all division directors have completed the 2010 (on-line) SBRFB Compliance Agency Liaison Training to ensure proper attention to and distribution of small business regulatory requirements

Chair Zurbuchen adjourned the Board meeting and convened the Public Hearing meeting at 10:45.

Public Hearing

Chair Zurbuchen requested that the public attendees make their introductions. Attendees were: Jessica Henman, MSN, CNM, Nurse Midwife, Owner, Birth and Wellness Center, Warrenton; Shari Stone-Ulrich, Certified Nurse-Midwife, Missouri Midwives Association, Helena; Halley Watson, RN, Birth and Wellness Center; and Keith Williston, Executive Director, Mother's Love Birthing Center/Sister's Touch, Independence.

Chair Zurbuchen announced that Teresa Generous, Director of Regulation and Licensure, Dept. of Health and Senior Services would not be attending the hearing and distributed a letter sent by Ms. Generous. Chair Zurbuchen announced Mr. Fischer would be attending the meeting on behalf of DHSS.

Question to Mr. Williston

Have you received any or all the waivers you requested from DHSS?

Mr. Williston referenced the December 3, 2010 letter from Ms. Generous and the short answer to the question is no. Mr. Williston stated he feels the letter does not adequately address the birthing center community's concerns and they are receiving conflicting responses from DHSS.

Mr. Williston stated that he is very disappointed that the Division of Regulation and Licensure is still insisting that it is appropriate and necessary to create standards for birthing centers based on standards for surgical facilities.

The most important issues are still of concern: 1. Regulating birthing centers as functioning hospitals or ambulatory surgical centers with code specification such as sprinklers, nurses' station, etc.; and 2. Physician staffing requirements which requires the continuous physician or professional nurse services be provided whenever a patient is in the facility.

The cost of physician staffing is very costly for the birthing center and not many doctors want to enter into a collaborative agreement with birthing centers because of the high cost of maintaining malpractice insurance. It has become a huge barrier for the birthing center community.

Jessica Henman distributed information outlining conflicts within DHSS current regulations and a letter from American Association of Birth Centers (AABC) stating that Missouri is the only state that requires a physician to be on staff at the birth centers or to serve as supervisor or director of the birth center. Furthermore, AABC is not aware of any state that has deliberately excluded Certified Professional Midwives who otherwise practice legally in the state from owning, directing, or attending birth at (DHSSA argues that CPMs can be on staff, they just have to be overseen by a CNM or MD for births) a birth center. In most states, the regulations simply recognize and permit all legally-practicing providers of maternity care to own, direct, or provide such care in birth centers, rather than restrict birth center practice to any particular category of health care professionals.

Ms. Henman stated that it has been AABC's experience that those few states whose statutes or rules appear to limit birth center ownership/staffing to Certified Nurse-Midwives (CNMs) or physicians are states that enacted birth center laws and promulgated birth center regulations some years before law were passed to license or otherwise permit practice by Certified Professional Midwives (CPMs). The AABC stated no state that has deliberately excluded CPMs; rather, the omission when it occurs is simply the result of CPMs having no legal status in the state at the time the statute and/or rules were written and approved. Licensure for birth centers has been available in Missouri since 1995, but the MO legislature only granted legal status to CPMs a few years ago.

A rule that prohibits a category of health professionals – Certified Professional Midwives --- from owning a birth center or attending births in birth centers unreasonably restricts an entire group of citizens from business ownership. This requirement seems particularly unreasonable and burdensome because the state legislature and the governor have determined CPMs may legally practice in Missouri. A significant percentage of AABC's

membership consists of birth centers owned and/or staffed by CPMs and in some states, the majority of centers are owned by CPMs. Furthermore, Congress last year passed legislation, as part of the health care reform bill that ensures that pregnant Medicaid recipients will have access to birth centers and to all birthing attendants recognized by state law who provide services in birth centers. Thus, the federal government has recognized that birth attendants other than CPMs and physicians may provide services in birth centers and when, they do, they are entitled to Medicaid reimbursement.

Questions and Comments from Board Members to Mr. Fischer and Public Members

Chair Zurbuchen referred to her October 1, 2010 letter to Ms. Generous. She referred to a short-term solution---the waiver process, specifically to enable the birth center people to understand what DHSS is looking for to grant waivers to them and updating current regulations to better in line with currently accepted practices of birthing centers, and the state's certification of birthing coaches as the long-term goal. Why have these request not been accomplished?

Ms. Forrest asked what are or have been the stumbling blocks regarding these addressing the requests from the birthing centers community? Ms. Henman did address Ms. Forrest question stating that because of budget cuts, DHSS has only one person doing what several people were doing in the past. Mr. Williston in previous correspondence to the SBRFB stated that DHSS division staff had informed him that while they are looking into applications for licensure, they "don't know how long this will take," because "we've never done one of these before."

Chair Zurbuchen addressed her comments to Mr. Fischer. There are a multiple issues that have not been adequately addressed by DHSS and no progress trying to work through the issues or attempt to make any changes, to provide clarity with regard to the waiver process. The Board members are disappointed that Ms. Generous and Mr. Linneman did not attend the meeting.

Ms. Englund stated that as a commercial realtor that Ms. Generous hands maybe tied based on the real estate laws. Maybe more could have been done to get the waivers but has the birth center community considered changing the laws specifically to address birthing centers. Ms. Henman stated that it would be very difficult because the birthing center community would receive opposition from very large lobbying groups such as the MO Hospital Association, physicians and others.

Mr. Williston stated that he would be meeting today with David East, at DHSS to provide his third set of engineering drawings because DHSS had lost two of the building drawings that he had previously submitted and DHSS had cashed his deposit check for licensure.

The Public Hearing was concluded at 11:45 a.m. and the Board members attended the House Small Business Committee Informational Hearing at the Capitol. Chair Zurbuchen will be addressing the House Committee on SBRFB's responsibilities and goals.

The SBRFB re-convened the Board meeting at 1:15 p.m.

The Board members discussed what options they as a Board should take to addressing the birthing center issues with DHSS. Chair Zurbuchen asked Ms. Englund and Mr. Libel to take the lead and draft a letter to DHSS Director Margaret Donnelly requesting that she review the Board's concerns and issues with birthing centers' comments.

The Board members decided they will take a more active role in communicating with members of the House Small Business Committee by showing up at committee hearings and partnering with NFIB and to encourage small business owners to actively engage with their legislators.

Chair Zurbuchen stated one of the goals to improve the SBRFB website. She asked that Ms. Forrest work with Ms. Anderson to revamp or redesign the website to make it more user-friendly and also provide relevant information that will assist small business owners.

Review of Kathy Bennett's Small Business Comment-Reply from the Department of Corrections

The Board will reserve any judgments regarding the Department of Corrections explanations until they have been able to meet with Ms. Bennett.

2011 Fiscal Year Annual Report

The Board discussed reviewing the evaluation process, areas for improvement and setting higher criteria and expectations for appointees to SBRFB.

A motion was made by Bob Bess and seconded by Sheila Forrest to recommend the following criteria be used by those doing Board appointments as a reference to ensure the Board appointees are a good fit to carry out the work of the Board: The Board members must be: Small business owner-current or former; Geographic-from all parts of the state, both rural and urban; and Industry-broad and diverse in type of company the Board members own. The SBRFB is a small but committed board, and it is of upmost importance that the appointee becomes actively involved: responsive to e-mails, attend Board meetings, participate in conference calls. Outside of meetings, the members need to be willing to spend at least a few hours per month doing the work of the Board. We communicate via e-mail and use online meetings, so the board member must have the

ability to participate in this way. The Board meets face-to-face 2-3 times per year, in Jefferson City and in other cities across the state. The motion was adopted.

Future Meetings

The next meeting Board meeting will be a GoToMeeting Conference Call on Wednesday, February 23 from 9:00 a.m. until 11:00 a.m. The Board will be discussing: Letter to DHSS and updating the SBRFB website.

The next face-to-face meeting will be April 20th. The Board will meet in the morning and adjourn to the Capitol to meet with legislators to discuss appropriating money to fund a full-time person specifically for SBRFB.

With no further business to be discussed, a motion was made by Bob Bess and seconded by Sheila Forrest to adjourn the SBRFB's January 26th meeting. Motion passed at 3:15 p.m.

Minutes Approved by the Board Members on February 23, 2011